

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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CAROLYN RESER,

Plaintiff,

-against-

HOMESTART AMERICA, INC., RICHARDS  
& DEVIEUX, ROSE MORTGAGE, INC.,  
WELLS FARGO BANK, NA, OPTION ONE  
MORTGAGE TRUST, COMPLETE TITLE  
COMPANY, LLC, COUNTRYWIDE HOME  
LOANS, INC., MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC., OPTIMUS  
TITLE SERVICES OF NEW JERSEY, LLC,  
SPEEDY APPRAISAL, MICHAEL KAUFMAN  
AND ANDRE DEVIEUX

Defendants.

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**Appearances:**

**For the Plaintiff:**

**Corrado Law Firm, P.C.**

350 Old Country Road, suite 207

Garden City, New York 11530

By: Joseph E. Corrado

**For Defendant Option One Mortgage Trust**

**Fein, Such, Kahn & Shephard, PC**

7 Century Drive

Parsippany, NJ 07054

**HURLEY, Senior District Judge:**

Plaintiff commenced this action asserting claims under the Truth in Lending Act, 15

U.S.C. § 1601 et seq. and the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601 et seq.

Presently before the Court is the unopposed motion of Defendant Option One Mortgage Corporation, incorrectly sued herein as Option One Mortgage Trust (“Option One”), to dismiss this action as against it (1) pursuant to Fed. R. Civ. P. 4(m) as Plaintiff failed to serve it with the summons and complaint and more than 180 days has elapsed since the filing of the complaint; and (2) on the grounds of res judicata. For the reasons set forth below, the motion to dismiss pursuant to rule 4(m) is granted.

### ***Background***

The action was commenced by the filing of a Complaint on September 12, 2005, at which time summons were issued. By Stipulation filed December 19, 2006, the action was dismissed as against Defendant Countrywide Home Loans, Inc. According to the Clerk’s Docket for this action, proof of service of the summons and complaint within the 120 days provided for in Federal Rule of Civil Procedure 4(m) has not been filed for any of the remaining defendants named in the complaint, including Option One. In fact, it has been more than two years since the filing of the complaint in this action.

### ***Discussion***

Rule 4(m) of the Federal Rules of Civil Procedure provides in part:

If service of the summons and complaint is not made upon a Defendant within 120 days after the filing of the complaint, the Court, upon motion or on its own initiative after notice to the Plaintiff, shall dismiss the action without prejudice as to that Defendant or direct that service be effected within a specified time.

Fed. R. Civ. P. 4(m). Rule 4(l) requires proof of service.

Here, no proof of service has been filed demonstrating that Option One was served within 120 days of the filing of the complaint. Indeed, according to Option One it has not been served

to date. Therefore the Court grants Option One's motion to dismiss pursuant to Rule 4(m). It is therefore unnecessary to address Option One's argument that this action is barred on grounds of res judicata.

***Conclusion***

Option One's motion to dismiss is granted and this action is dismissed as to Option One without prejudice.

**SO ORDERED.**

Dated: Central Islip, New York  
October 23, 2007

/s/ \_\_\_\_\_  
Denis R. Hurley  
Senior District Judge